IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No 2339 of 2001
For Approval and Signature:
Hon'ble MR.JUSTICE P.B.MAJMUDAR

1. Whether Reporters of Local Papers may be allowed to see the judgement? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BHARATKUMAR GAJANAND VYAS
Versus
MAHATMA GANDHI LABOUR INSTITUTE

Appearance: MR AJ YAGNIK for the Petitioner.
TANNA ASSOCIATES for Respondent No. 1
Mr.Joshi, Assistant GOVERNMENT PLEADER,
for Respondent No. 2

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 03/09/2001

C.A.V. JUDGEMENT

1. Mahatma Gandhi Labour Institute, Ahmedabad, respondent No.1, has suspended the present petitioner on the ground that the petitioner went on hunger strike on 2nd October, 2000 by sitting at the front entrance of the institution as well as on the ground that he had refused to drive the vehicle of the Institution on 11.10.2000 on the ground that unless he was provided with Log Book, he will not drive the vehicle. On the aforesaid two grounds, the petitioner is placed under suspension since 13th August, 2000.

2. The present petitioner is serving as a driver in the respondent No.1-Institution and he is a Class III employee of the said Institution. He is serving since last 16 years on the said post. The petitioner used to drive the vehicle attached to Mr.S. Chandrasekhar, the

Director General of the Institution. in the past, the petitioner had addressed certain representations in connection with certain demands. One of such representations is annexed at page 20, Annexure `B', which is addressed to the Chairman of the respondent No.1-Institution. The Labour Minister is the Chairman of the said Institution. In the said representation, the petitioner has pointed out to the Chairman that he is staying at Odhav area of Ahmedabad City and that the Director General is staying at Gandhinagar and that, in order to see that the petitioner can effectively discharge his duties, he had applied for allotment of a quarter at Gandhinagar and that, on one ground or the other, his application is not accepted and that he was deprived of getting the benefit of quarter at Gandhinagar. In the said letter, the petitioner has also raised a demand for giving uniform, which, according to him, was required to be provided to the driver. It is also further stated by him in his representation that Mr.Chandrasekhar, the Director General, was often interrupting him at the time of driving the vehicle and he himself sometimes drives the vehicle at a very excessive speed and, ultimately, if the vehicle meets with an accident, the driver can be subjected to a fine of Rs.1,000/- and imprisonment for six months. In the said representation, he has made some grievances against Mr.Chandrasekhar, the Director General. In the present proceedings, we are not concerned with the merits or otherwise of the said grievances, demands or allegations of the petitioner which he has ventilated in his representation dated 18.9.2000. Thereafter, it seems that, the petitioner sat at the entrance of the said Institution on 2nd October, 2000, at 9.00 O'clock in the morning. Ultimately, on request, the petitioner got up and went away from the said place. It is stated in the said suspension order at Annexure `A' that on request of the Chairman, the petitioner ultimately went away and that he had not remained on fast after 9.00 O'clock on 2nd October, 2000. It is stated that it cannot be said that the venue selected by the petitioner for the fast was proper. The other ground mentioned in the suspension order is that on 11.10.2000, the Director General of the Institution was required to attend the meeting at Gandhinagar, but the petitioner demanded Log Book and refused to drive the vehicle unless he was provided with the Log Book. In the suspension order, it is stated that, on the basis of the noting given by the Driver, the Log Book is required to be returned to the Assistant and the said procedure is followed since 1999 and that, accordingly, the petitioner refused to drive the vehicle in question on 11.10.2000.

On the basis of the aforesaid two incidents, the petitioner was placed under suspension on the ground that the Institution is contemplating departmental enquiry against the petitioner for the aforesaid misconduct. The said suspension order is challenged by the petitioner by way of this petition.

3. Mr.Anand Yagnik, learned Advocate for the petitioner, has challenged the aforesaid suspension order on various grounds.

It was argued by Mr.Yagnik that, from the facts and circumstances of the case, it cannot be said that the petitioner was guilty of misconduct. Mr.Yagnik further submitted that it is open for the employee to resort to lawful demonstration without disturbing law and order and peace. He further submitted that it is, no doubt, true that the petitioner was sitting at the entrance of the Institution on the relevant day, i.e. on 2nd October, 2000, but the moment the Chairman assured the petitioner that his demand will be considered, immediately, the petitioner got up and went away from the said place. It is also submitted by Mr.Yagnik that, therefore, there is no offence or misconduct if a person sits at the entrance of the Institution for the purpose of pressing for his legitimate demand and asks for justice from his employer. Similarly, regarding the second incident mentioned in the order, it is submitted that as per the Circular of the Institution dated 24.11.1998, which he has placed on record later on, a driver is supposed to make necessary notes after the journey is over and he has to obtain signature of the Officer and the particulars are required to be filled in, in the Log Book; otherwise, such journey will not be treated as an authorized journey and the concerned Officer will have to make the payment of the expenditure for such journey. It is also stated in the said Circular that at the end of every day, the driver will have to show the Log Book to the Officer and his signature is required to be obtained. Mr.Yagnik has relied upon Clauses (9) and (11) of the said Circular dated 24.11.1998. He, therefore, submitted that the petitioner was supposed to fill up the Log Book and after filling it, he was required to obtain the signature of the Officer concerned. He submitted that, therefore, the petitioner was following the said Circular and policy and for that purpose, he cannot be penalized or, in any case, it cannot be said that such demands on his part would constitute any misconduct.

4. Mr.Yagnik further submitted that, in any case, so

far as the incident of 2nd October, 2000 is concerned, since the demand of the petitioner was not taken into account, ultimately, he resorted to a lawful demonstration of fast, which cannot be said to be a misconduct in any manner. Mr.Yagnik, therefore, submitted that this is not a case in which the petitioner was required to be placed under suspension and that it is open for the Department to proceed with the enquiry, wherein the petitioner can also lead his evidence, but it is not a case, in which, during the pendency of the enquiry, the petitioner is required to be suspended.

5. Mr.Yagnik also further submitted that, in any case, considerable time has passed since the petitioner has been placed under suspension and till today, no charge-sheet is issued to him and, therefore, the Institution should not compel the petitioner to remain under suspension for an indefinite period. In his submission, the fact that the petitioner is under suspension since last 10 months itself is sufficient punishment, and though it cannot be said that suspension is a punishment, in substance, it has resulted in punishment as the petitioner is deprived of his full salary during the intervening period. He further submitted that the Management should now take him back in service, especially when even enquiry is not started against him. Mr.Yagnik also further submitted that, in any case, if the aforesaid action of the petitioner has hurt the feeling of the Institution or that of the Director General of the Institution, the petitioner is tendering his unconditional apology. On instructions from his client, who was present in the Court at the time of hearing of the petition, he submitted that the Institution will have no cause for complaint against the petitioner in future and that the petitioner will serve sincerely and honestly, without, in any way, hurting the feelings of the Officers of the Institution.

6. Mr.Yagnik has also placed an affidavit of the petitioner on record, copy of which was given to the Advocate for respondent No.1. In the said affidavit, the petitioner has stated as under :-

> " ... ...
>
> 1. That I tender my unconditional apology if my any action has caused disrepute to the Mahatma Gandhi Labour Institute.
>
> I had no intention to malign any

particular individual when I decided to express my grievances by way of non violent protest. Even then if the respondent Director General has failed (sic) that my action has hurt him then in that case I honestly say that my grievance was not against him in person but against some of his policies which at this juncture I say I might have misunderstood. I say that I have taken action of observing fast by way of protest and showing posters expressing my grievances in good faith thinking that I have fundamental right of demonstration against my employer in a peaceful and non-violent manner. If my action taken in good faith is contrary to the law of the land then I tender my unconditional apology to the State of Gujarat and to Gandhi Labour Institute.

2. I say that if my correspondence with the respected Director General of Gandhi Labour Institute and with the Government of Gujarat contain harsh feelings against any particular individual then I say that I did not do the same for any ulterior purpose. However, if I have stated something which was not called for then in that case I again tender my unconditional apology to whosoever I have hurt with my writings.

... ..."

Under the aforesaid circumstances, it was submitted by Mr.Yagnik that the order of suspension is required to be set aside. Mr.Yagnik has also relied upon certain judgments to substantiate his say that the so-called alleged act on the part of the petitioner do not constitute any misconduct and that the petitioner should not have been suspended regarding the incidents, of which reference is made in the suspension order.

7. Mr.Yagnik also submitted that the order of the Appellate Authority is also bad in law as the Director General, who is the author of the original suspension order himself sat in appeal as he was a Member of the Executive Committee. He, therefore, submitted that the order of the Appellate Authority is also vitiated on the aforesaid ground.

8. Mr.Kerial, learned Advocate, argued on behalf of the respondents that the demand of the petitioner was totally unjustified and there was no reason for him to demonstrate at the entrance of the Institution on 2nd October, 2000. Mr.Kerial further submitted that there was no justification in any of the demands, like getting quarter at Gandhinagar, or asking for Log Book, etc., and the said demand was absolutely unjustified. Mr.Kerial further submitted that if the petitioner is taken back in service, it will give signal to other employees that even if they misbehave, they are not going to be penalized, that, ultimately, they are going to be reinstated in service and that they will be allowed to go scot-free. It was further argued by Mr.Kerial that the petitioner refused to drive the vehicle at the relevant time on absolutely irrelevant ground of getting Log Book, etc., and that because of the said conduct on his part, especially sitting at the entrance of the Institution when so many dignitaries were to remain present, he has tried to defame the Institution in the eye of the people. He submitted that, even in the past, he has written letter, in which improper language was used by him and that it is a case of grave insubordination and misconduct on his part. Mr.Kerial has also relied on the language used by the petitioner in his letter dated 18.9.2000. He submitted that the order of suspension is not an order of penalty and, therefore, it is not required to be interfered with by this Court.

9. Mr.Kerial has also relied upon the affidavit-in-reply filed by the Director General of the Institution. In paragraph 8 of the affidavit-in-reply, it is stated that the petitioner chose to observe fast on 2nd October, 2000 outside the gate of the Institute and that this act of the petitioner is, prima facie, an act unbecoming of an employee of the Institute. It is further submitted that the petitioner was aware that a function to unveil a bust of Mahatma Gandhi was scheduled on 2nd October, 2000 and that His Excellency the Governor of Gujarat had been invited to attend the function and to unveil the bust. It is further stated in the said paragraph 8 that by choosing to undertake a Fast outside the main gate of the Institute immediately before the function was scheduled to commence, the petitioner wanted to gain attention and publicity. It is also further stated in the said affidavit that the Honourable Minister of Labour, who is the President of the Institute, persuaded the petitioner to give up his fast in order to ensure that the acts of the petitioner did not become an embarrassment to the Institute. According to the

deponent of the affidavit-in-reply, the petitioner, having gained the publicity which he wanted, immediately accepted the offer and ended his fast. It is stated that this act of the petitioner was a predetermined act so as to undermine the prestige and dignity of the Institution. In the affidavit-in-reply, reference is made to Section IX of the Mahatma Gandhi Labour Institute (Service) Byelaws, 1984. Sub-clause (4) of the same provides as under :-

> " ... ...
>
> IX. xxx xxx xxx
>
> (4) An employee of the Institute shall endeavour to promote the objectives of the Institute and shall not act in any manner prejudicial thereto.
>
> ... ..."

It is also stated that the aforesaid act on the part of the petitioner in choosing to go on a fast at the main gate of the Institute on 2nd October, 2000 immediately before the scheduled commencement of the function, which was to be graced by His Excellency the Governor of Gujarat and other dignitaries, is, prima facie, an act prejudicial to the interests of the Institute.

It is further stated in the affidavit-in-reply that if an employee submits a letter to the employer, seeking redressal of an alleged violation of statutory rights, and if, within 14 days, such a letter is not acted upon by the concerned authorities and if the petitioner then chooses to observe a fast with a view to bringing the employer into disrepute and gain publicity, and if, for doing such an act, the employee is suspended in contemplation of disciplinary proceedings to be initiated against him and if he challenges the same before the Court, then, the Court may, prima facie, not interfere in the petition as it would result in alarming and far-reaching consequences not only as regards the Institute, but as regards the whole State with reference to the maintenance of discipline and good conduct among the employees.

Regarding the second incident of 11th October, 2000 also, it is stated that the petitioner allegedly refused to drive the car, and it is an act of insubordination. In the affidavit-in-reply, it is stated that the Director General established a system, whereby

the Log Book of the vehicle is written by an Assistant in the Institute and since 1999, the Log Book had been in the possession of the Assistant. According to the deponent, still the petitioner made an issue of the same on 11th October, 2000 without any cause whatsoever and that, therefore, the same is also, prima facie, an act of insubordination.

It is also stated that there was no justification in the demand for allotment of quarter at Gandhinagar and that there was no justification to raise the issue regarding supply of warm clothes for winter and seeking a decision before 2nd October, 2000. It is stated that at the relevant point of time, there was no need whatsoever for the petitioner to have raised such a demand and to have insisted on a time limit for resolution of the issue. It is stated that except levelling allegations against the Director General, there were no other exceptional demands. It is again asserted in the reply that the action of going on fast on 2nd October, 2000 was, prima facie, an act of misconduct and that there is no correlation between the demands raised by the petitioner in his letter dated 18th September, 2000 and the situation created by him on 2nd October, 2000.

It is stated in paragraph 12 of the reply that at the time of hearing of the appeal, the Honourable Minister for Labour, who was acting in his capacity as Chairman of the Executive Council, had, at the end of the hearing, asked the petitioner whether he would be ready to tender an apology. The petitioner refused to tender apology before the Executive Council which was considering his appeal. Regarding the Director General remaining present at the time of hearing of the appeal, it is stated in the reply that the Director General was constrained to participate as a Member to constitute the quorum of the Appellate Committee (Executive Council), i.e., to ensure that the meeting of the Executive Council on 27th December, 2000 had the requisite quorum of four persons and that the same is permissible, for which reference is made to the decision of the Apex Court in Election Commission of India v. Subramanian Swamy, AIR 1996 SC 1810. It is also stated in the reply that the Director General did not participate in the making of the final decision of the Executive Council regarding the petitioner's appeal. Mr.Kerial also argued that the Director General remained present only in order to complete the quorum and had not participated in the discussion. It is stated that the Director General only communicated the Executive Council's decision confirming the order of suspension and that he had not taken part in

the discussion and that he is not a party to the decision which is taken by the Appellate Committee.

Mr.Kerial, relying upon the said affidavit-in-reply, submitted that since the petitioner committed an act of insubordination, he was rightly suspended. He, therefore, submitted that the petition deserves to be dismissed. Mr.Kerial has also cited various judgments to substantiate his say that the suspension order is not required to be interfered with by this Court.

10. I have heard Advocates on both the sides at great length. The question which requires consideration is whether the act of the petitioner on the relevant day, i.e. 2nd October, 2000, can be said to be of such a nature which can be said to be a grave act of misconduct justifying suspension order. The main ground for suspending the petitioner, considering the affidavit-in-reply, seems to be the incident of 2nd October, 2000. It is, no doubt, true that in the suspension order, there is also a reference about the incident of 11th October, 2000 regarding refusal on the part of the petitioner to drive the car unless the Log Book is given.

11. It is not in dispute that the petitioner was sitting at the entrance of the Institution on 2nd October, 2000, i.e. the day on which the Institution had organized some function and various dignitaries were to attend the said function. It is the say of the Institution that the petitioner deliberately selected the said date in order to attract the attention of the Dignitaries and that there was no justification in any of the demands and that, he should have waited for some time because immediately, within a few days, it was not expected that his demands would be satisfied by the Institution. However, in my view, sitting at the entrance of the Institution on the relevant day pressing for some demands by the employee, ipso facto, cannot be said to be a misconduct of such a nature requiring his suspension from service. One must bear in mind that the respondent-Institution is an Institution of repute and it is synonymous with the Father of the Nation, Mahatma Gandhi, who initiated the policy of non-violent resistance and insistence on truth as a means for pressing for demands. It seems that, there is an irony to resist such an act of the employee of resorting to hunger strike or going on lawful demonstration in a peaceful manner and to suspend him on that ground by the Institution, like the Mahatma Gandhi Labour Institute.

It is a matter of common knowledge that Mahatma Gandhi was the pioneer and trailblazer in exhorting the world at large to resort to non-violent means in pressing for one's demands. If such an Institution opposes the action of going on hunger strike, or resorting to non-violent means of holding peaceful demonstration, and treats the said action as misconduct, then, it will sound the death-knell of all peaceful and non-violent policies for pressing for one's demands, and the Institution does not deserve to attach to it the name "Mahatma Gandhi".

Considering the fact that the petitioner has also subsequently even tendered an apology and has submitted an affidavit, a copy of which is given to the other side, it was expected that some magnanimity will be shown by the respondent-Institution. This is not a case in which some personal egos were required to be brought in the picture. On the contrary, some pragmatic and humane approach was required to be adopted by the persons, who are in charge of such a noble institution. It is, no doubt, true that the petitioner should not have used the allegedly intemperate language in his letters, but, for that, as stated earlier, he has already tendered his apology and even at the time of arguments, Mr.Yagnik, under instructions of his client, has also stated that if he has hurt the feelings of the Director General, he is apologizing to him and he has also assured the Court that, in future, the Director General may not have any cause for grievance against the petitioner's conduct. In my view, simply because the petitioner, at the relevant time, failed to tender apology, when his appeal was heard, the respondent-Institution should refuse to accept the apology tendered subsequently at the time of hearing of his petition only on the ground that it is given at a belated stage. If a person wants to demonstrate peacefully and for that purpose selected a prominent place to attract the attention, it cannot be said that the selection of such place and time may constitute a misconduct.

The petitioner could not have selected any other place, wherein nobody would have paid attention and, therefore, there is nothing wrong if he had selected such a place for the purpose of demonstration. I also find considerable substance in the argument of Mr.Yagnik that on assurance of the Honourable Minister that his demand will be looked into, he immediately called off his fast and left the place. This fact is also not in much dispute. In my view, therefore, selecting a particular place or a particular day for certain demands can never be said to be an act of misconduct as it is always open

for the citizen to resort to peaceful demonstration without committing breach of peace. In the instant case, it is not the say of the respondent No.1 that the petitioner acted in a rowdy manner or even tried to damage any of the properties of the Institution or resorted to violence. He was merely sitting at a place and ultimately, went away on getting certain assurance. It is difficult to understand as to how this particular act on the part of the petitioner can be said to be an act which allegedly defamed the Institution or brought it to disrepute. In democracy, it is the right of citizens to demonstrate for their right or demand in a peaceful manner. Under these circumstances, it cannot be said that the act on the part of the petitioner dated 2nd October, 2000 is such that it deserves his immediate suspension from duty.

12. As regards the contention of Mr.Kerial that there was absolutely no justification in the demands of the petitioner regarding Log Book, warm clothing or allotment of quarter at Gandhinagar. Mr.Kerial argued at length on the said point to substantiate his say that there was no justification and that he is not entitled to any such benefit. However, at this stage, it is not required to be considered whether the demands were legitimate or not. If the demands are not legitimate, it is open for the Institution to take appropriate decision on such demand of the employee. This Court is concerned with the order of suspension to find out whether it is a case in which suspension order should have been passed against the petitioner. It was expected from the Institution even to accept the allegedly belated apology which the petitioner has tendered. The respondent-Institution, therefore, should not have been touchy simply because the petitioner had not tendered the apology when the appeal was pending. In my view, it is always open for an employee, or, for that matter, for any citizen to resort to peaceful demonstration, and without breaking law and order, if such demand is made by sitting at the entrance of the Institution, it can never be treated as an act of misconduct which requires suspension of the employee from service. The stand taken by the respondent No.1 is difficult to appreciate that the employees of the Institution cannot raise their voice for the purpose of pressing certain demands. At one stage, it was argued by Mr.Kerial that the petitioner could have selected some other place, like the backyard of the Institution, instead of selecting the front entrance, for pressing such demands. In my view, if the petitioner wanted to see that his grievance is known to the dignitaries, who were present at the meeting, it cannot be found fault

with, and no purpose would be served by holding fast and peaceful demonstration on the backyard of the Institution.

13. It is an admitted fact the aforesaid day was a a holiday and, therefore, the petitioner was not on duty. In fact, there is some substance in the argument of Mr.Yagnik that on assurance given to the petitioner by the Chairman of the Institution, he immediately went away, calling off his strike and thereafter, for that very incident, he was subjected to suspension order which is not a fair action on the part of the Management, as, on the assurance, if he has called off the fast, it was absolutely unjustified to suspend him for the said incident in question. In my view, it cannot be said that the said action on the part of the petitioner can be said to be an action which brought disrepute to the Institution in the eye of the general public. It is required to be noted that till today, no departmental enquiry is initiated against the petitioner and no charge-sheet is also given to the petitioner. Mr.Kerial, learned Advocate for the respondent No.1, submitted that since this matter is pending, wherein the petitioner has challenged the suspension order, the Department thought it fit not to issue the charge-sheet to the petitioner since the issue was sub judice. Mr.Kerial has also further submitted that the Department is a small institution and, therefore, some time was required even for drafting the charge-sheet as adequate staff was not available for the same.

It is required to be noted that this Court has not stayed the departmental proceedings in any manner and, therefore, simply because this matter is pending, is no ground not to issue charge-sheet or to initiate departmental enquiry against the petitioner and for more than 10 months, the petitioner has remained under suspension. It is equally no ground not to start departmental proceedings by serving charge-sheet simply on the ground that adequate staff is not available.

14. At this stage, reference is required to be made to certain judgments cited by Mr.Yagnik.

Mr.Yagnik has relied upon the decision of the Supreme Court in Kameshwar Prasad and others v. State of Bihar and another, AIR 1962 SC 1166. It is held by the Supreme Court that peaceful and orderly demonstration would fall within the freedom guaranteed under the Constitution under Article 19(1)(a) and Article 19(1)(b) of the Constitution. Paragraph 13 of the said decision

reads as under :-

" ... ...

(13) The first question that falls to be considered is whether the right to make a "demonstration" is covered by either or both of the two freedoms guaranteed by Art. 19(1)(a) and 19(1)(b). A "demonstration" is defined in the Concise Oxford Dictionary as "an outward exhibition of feeling, as an exhibition of opinion on political or other question especially a public meeting or procession". In Webster it is defined as "a public exhibition by a party, sect or society .... as by a parade or mass-meeting". Without going very much into the niceties of language it might be broadly stated that a demonstration is a visible manifestation of the feelings or sentiments of an individual or a group. It is thus a communication of one's ideas to others to whom it is intended to be conveyed. It is in effect therefore, a form of speech or of expression, because speech need not be vocal since signs made by a dumb person would also be a form of speech. It has however to be recognized that the argument before us is confined to the rule prohibiting demonstration which is a form of speech and expression or of a mere assembly and speeches therein and not other forms of demonstration which do not fall within the content of Art. 19(1)(a) or 19(1)(b). A demonstration might take the form of an assembly and even then the intention is to convey to the person or authority to whom the communication is intended the feelings of the group which assembles. It necessarily follows that there are forms of demonstration which would fall within the freedoms guaranteed by Art. 19(1)(a) and 19(1)(b). It is needless to add that from the very nature of things a demonstration may take various forms; it may be noisy and disorderly, for instance stone-throwing by a crowd may be cited as an example of a violent and disorderly demonstration and this would not obviously be within Art. 19(1)(a) or (b). It can equally be peaceful and orderly such

as happens when the members of the group merely wear some badge drawing attention to their grievances.

... ..."

Mr.Yagnik has further relied upon the judgment in Gujarat Majdoor Panchayat, Ahmedabad v. State of Gujarat & Anr., 1988(2) GLR 1005. In the said matter, the petitioner-Union challenged the legality and validity of the order passed by the Police Commissioner refusing to grant permission to the workers for installing `Mandap' at the Reliance Gate and permitting 200 to 250 workmen to sit there. The relevant observations in paragraphs 3 and 4 are reproduced as under :-

" ... ...

2. As per the relevant Rules and Regulations framed under Sec. 33 of the Bombay Police Act ("the Regulations and Conduct of Assembly and Procession (Ahmedabad Police Commissioner Area) Rules, 1975") the authorized officer can certainly refuse to grant permission sought for. But the permission can be refused on the ground mentioned in Rule 8. Rule 8 inter alia provides that the permission sought for may be refused if the authorized officer is of the opinion that granting of such permission will not be in the interest of the sovereignty and integrity of India, the security of the State, friendly relations with Foreign States, public order, decency or morality. The Rule does not authorize an officer concerned to refuse permission on the ground of law and order and public interest. Moreover, sub-rule (2) of Rule 8 requires that whenever the permission is to be refused, the reasons thereof are required to be mentioned. In the impugned order, to say the least, no reason whatsoever is mentioned except stating that it is not in the public interest from the point of view of law and order. This is no reason at all. It must be borne in mind that the workers have fundamental right to assemble and make demonstration for ventilating their grievances. The grievance may be against the Government or it may be against the management of a

company or a factory. The workers' fundamental right to assemble and if need be to take out procession cannot be unreasonably restricted so as to stifle that right completely. If the workers are to assemble outside the factory gate in a peaceful manner for showing their strength and unity in order to impress upon the management about the justness and fairness of their demands the permission could not have been refused on the ground which is not germane to the provisions of the Rules in question. To do so would amount to denying the worker's legitimate right of ventilating their grievances against the stand taken by the management which according to them is unreasonable.

3. Be it noted that in a contest between capital and labour, the authorities charged with duties to maintain law and order cannot and should not take sides with either of the two warring factions. Just as the rights of the management (i.e. that of capital) are required to be protected, the rights of workmen (i.e. that of labour) are also required to be protected. In such a contest balance has got to be struck by the authorities. Even the questions of `law and order' and that of `public order' have got to be examined and understood in the context of the dispute between the parties. The approach should not be from the point of view of colonial hang-over which has its roots in the pre-constitutional days. The Constitution does not give that importance to the protection of property and property rights as against the legitimate rights of the workers. The Constitution has struck balance between the two. Undue importance to the property rights and the protection of the propertied class as against the workers' fundamental rights is not called for. Whenever there is a clash or contest between capital and labour it does not behove to the executive authorities or for that matter to any constitutional functionary to take sides with the management or with the propertied class. If the approach is not changed and not

allowed to be influenced by the ideals and objectives enshrined in the Constitution, it may be that the people belonging to the weaker section of the society and the working class may never be able to exercise their fundamental rights of assembly and may never be able to assert their demands forcefully.

4. If the entire problem is examined from the view point discussed hereinabove and from the point of view of the relevant Rules in question i.e. Rule 8 it is clear that total refusal to instal `mandap' outside the factory gate and total denial for permission to assemble 200 to 250 workmen is not at all justified. Rather, it militates against the Constitutional provisions regarding the fundamental rights of citizens contained in Part III of the Constitution and also against the directive principles of State Policy contained in Part IV of the Constitution. Therefore, the impugned order Annexure `B' is required to be quashed and set aside.

... ..."

Mr.Yagnik has also relied upon the judgment in M/s. Ambubhai & Diwanji v. Gujarat Mazdoor Panchayat & Ors., 1985(1) GLR 179. In connection with the powers of the Court to grant interim injunction under the provisions of Order 39, the Court made the following observations which are reproduced as under :-

" ... ...

8. In the sphere of industrial relations there is bound to be dispute between the employer and employees with regard to some issues connected with the payment of salary and other benefits to the workmen and / or with regard to the working conditions of the employees. The workers resort to agitation with a view to show their collective strength and making it known to the employer as well as to all concerned that how strongly they feel about their demands. Demonstrations and strikes are the legitimate means to which the workers can resort. When workers resort to this

legitimate means recognized by the employers and employees and also by the society and the Government, the Court cannot decide the issue regarding grant or refusal of injunction without taking into consideration the nature and origin of the dispute in question. Doing so would amount to turning the face away from the reality. The court is duty bond to take into consideration all the relevant and important aspects pertaining to the dispute. Not doing so would amount to failure to exercise jurisdiction vested in court. Hence the contention is rejected.

xxx xxx xxx

10. It is axiomatic to say that no workman can claim a fundamental right or a legal right to behave in an indisciplined and or rowdy manner, either during the office hours or out of office hours, either within the office premises or outside the office premises. No such right can be claimed, nor any such right has ever been claimed by workmen. The allegation that indecent slogans are being painted and shouted has been denied by the employees. They contend that they have not transgressed the reasonable limits in shouting slogans and in making demonstrations. The question is not whether such type of actions which are alleged and which may be true, are required to be permitted or prohibited. When the injunction is asked for praying that the workers be restrained from carrying on certain activities, the civil court while refusing such injunction does not permit the workmen to indulge in such activities. All that is done by the civil court is to say that an injunction is not the remedy which can be availed of and which can be granted in such a situation. This does not mean assuming that the allegations against the workmen are true, that the workmen have right to behave in an indisciplined and or rowdy manner and that the civil court permits them to behave in that manner. The civil court refuses to grant injunction on certain well recognized principles.

xxx xxx xxx

15. Whenever there is a dispute between the employer and employees in the sphere of industrial relations, generally the disputes have their roots in economic demands of the workmen. Such disputes may take within their sweep certain related aspects also. With a view to bring pressure upon the employer, the employees may resort to demonstrations, slogan shouting and such other well known and duly recognized modes of expression of their feelings. The disputes between an employer and his employes do not arise out of ordinary contractual rights and obligations or out of property rights. These disputes in the sphere of industrial relations have their roots in the perennial conflicts between capital and labour. They cannot be governed by standards of "breach of contract" of the bygone days of laissez-faire. The problems of relations between an employer and employees are peculiar in nature and therefore they are governed by special labour legislations. By their very nature generally they fall outside the scope of the provisions of Order 39 Rules 1 and 2 of the Code of Civil Procedure. There may be exceptionally few cases arising between labour and management-say rarest of the rare-which may be covered by these provisions. Such cases would be only those in which disputes may have their roots in ordinary contractual relations and property relations and which have no connection with the disputes regarding the working conditions and the terms of employment.

xxx xxx xxx

18. In industrial relations collective bargaining is a recognized mode of pressing one's demands and getting the same achieved. The disputes between the employers and employees have generally their roots in economic demands made by the workmen for the rise in salary and for better working conditions. When such demands are submitted and are to be

> pressed, a need arises to convey the demands collectively and effectively. This is with a view to impress upon the employer as to how strongly the workers feel about their demands. The employer is required to be impressed upon, that the demand is strongly backed by almost all the workmen and how all the workmen feel strongly about the same. As far as the workmen are concerned, the demands are of vital significance to them. These demands cannot be conveyed merely by representations. The history of the labour movement in this country and throughout the world, suggests that generally employers do not concede to the demands made by workmen by mere representations. Therefore, there is need for demonstrations. slogan shouting and strikes. This is the reason why demonstrations, satyagrahas, strikes, slogan shouting, etc., have come to be associated with agitation for pressing the workers' demands.
>
> (emphasis supplied)
>
> ... ..."

Reference is also required to be made to the decision of this Court in A.C. Barot v. District Superintendent of Police, Panchmahals & Ors., XXXI(2) GLR 888. In the said judgment, it has been held by this Court that the Court does not mean to observe that the misconduct or abuse of the power must only be during discharge of the duty, but even accepting the facts alleged against the petitioner as they are, there is absolutely no allegation that the petitioner abused his power or misconducted himself as Police Officer. There is, therefore, total non-application of mind by the District Superintendent of Police in passing the suspension order against the petitioner.

14. Mr.Kerial, on the other hand, has relied upon the Division Bench judgment of this Court in Hariprasad Raghuram Dave v. State of Gujarat and others, AIR 1965 Gujarat 283. It has been observed in paragraph 25 as under :-

" ... ...

(25) Mr.Zaveri then urged that in the first part of this sub-section each of the defaults mentioned therein, that is to say, being cruel, perverse, remiss or negligent or unfit for discharge of duty, contemplates a long course of conduct on the part of the delinquent. In other words, a police officer before he could be held guilty of being perverse, negligent, cruel or unfit, several instances of such defaults have to be established, to constitute the guilt of neglect, perverseness, cruelty or unfitness. As delinquencies of a serious nature which arise out of along course of conduct of the delinquent is dealt with by the first part, more severe punishments of removal, suspension and dismissal are provided by that part. But according to the learned advocate the second part only deals with the defaults of the nature of breach of discipline or misconduct, each of which contemplates only a single act of default on the part of the delinquent police officer and, therefore, only fine is prescribed. We hardly find any merit in this submission. We have no reason whatsoever to read this section in this way. Even one act of misconduct on the part of the police officer of accepting a bribe is as serious an offence as of negligence, collectively, in a dozen instances committed by him. It cannot, therefore, be said that such misconduct is to be visited with the punishment of only a fine not exceeding even the amount of one month's pay. Again, the Inspector does not picture in the second part of this sub-section at all, and if the interpretation placed by Mr.Zaveri is accepted, then even if he were to take a large bribe he cannot be punished at all, in the category of misconduct. He cannot be even fined nor can he be dealt with under the first part as amounting to misconduct because "misconduct" does not appear in the first part of the sub-section

(1). Again it is a wrong assumption to make that one serious act of negligence or cruelty in the discharge of duty cannot be considered to be `neglect' or `cruelty' which would justify his dismissal or removal. We, therefore, are unable to accept the interpretation tried to be placed by Mr.Zaveri at the fag end of the arguments that he submitted before us on this point. We reject the contention that the punishment of removal for the act of breach of discipline could not be inflicted under section 25.

... ..."

However, in my view, so far as the cases of disciplined Police Force are concerned, they stand on an altogether different footing.

Mr.Kerial has also relied upon the decision in State of Orissa v. Bimal Kumar Mohanty, AIR 1994 SC 2296. It has been observed in paragraphs 12 and 13 as under :-

" ... ...

12. It is thus settled law that normally when an appointed authority or the disciplinary authority seeks to suspend an employee, pending inquiry or contemplated inquiry or pending investigation into grave charges of misconduct or defalcation of funds or serious acts of omission and commission, the order of suspension would be passed after taking into consideration the gravity of the misconduct sought to be inquired into or investigated and the nature of the evidence placed before the appointing authority and on application of the mind by disciplinary authority. Appointing authority or disciplinary authority should consider the above aspects and decide whether it is expedient to keep an employee under suspension pending aforesaid action. It would not be as an administrative routine or an automatic order to suspend an employee. It should be on consideration of the gravity of the alleged misconduct or the nature of the

allegations imputed to the delinquent employee. The Court or the Tribunal must consider each case on its own facts and no general law could be laid down in that behalf. Suspension is not a punishment but is only one of forbidding or disabling an employee to discharge the duties of office or post held by him. In other words it is to refrain him to avail further opportunity to perpetrate the alleged misconduct or to remove the impression among the members of service that dereliction of duty would pay fruits and the offending employee could get away even pending enquiry without any impediment or to prevent an opportunity to the delinquent officer to scuttle the enquiry or investigation or to win over the witnesses or the delinquent having had the opportunity in office to impede the progress of the investigation or enquiry etc. But as stated earlier, each case must be considered depending on the nature of the allegations, gravity of the situation and the indelible impact it creates on the service for the continuance of the delinquent employee in service pending enquiry or contemplated enquiry or investigation. It would be another thing if the action is actuated by mala fides, arbitrary or for ulterior purpose. The suspension must be a step in aid to the ultimate result of the investigation or enquiry. The authority also should keep in mind public interest of the impact of the delinquent's continuance in office while facing departmental enquiry or trial of a criminal charge.

13. On the facts in this case, we are of the considered view that since serious allegations of misconduct have been alleged against the respondent, the Tribunal was quite unjustified in interfering with the orders of suspension of the respondent pending enquiry. The Tribunal appears to have proceeded in haste in passing the impugned orders even before the ink is dried on the orders passed by the appointing authority. The contention of the respondent, therefore, that the discretion exercised by the Tribunal should

not be interfered with and this court would be loath to interfere with the exercise of such discretionary power cannot be given acceptance.

... ..."

It is required to be noted that considering the facts and the allegation against the delinquent, the Apex Court found that the suspension order was justified in the facts of that case.

Mr.Kerial has also relied on the decision in Kaushik T. Patel v. Gujarat Water Resources Development Corporation Ltd. & anr., 1997(1) GLR 153. In paragraph 9 of the said judgment, it has been observed as under :-

" ... ...

The charges on which the disciplinary proceedings is contemplated against the petitioner are of serious nature. From these charges, on which the disciplinary inquiry is contemplated against the petitioner, it is difficult to conclude that no misconduct or irregularities alleged is made out. Court finds from the charges which have been stated by the petitioner himself that the allegations against the petitioner are grave in as much as they indicate that because of irregularities of the petitioner the Corporation suffered loss of Rs.5 lacs. The second charge is also equally grave. It is a case of utter misuse of delegations of powers. In the matters of this kind, it is advisable that the petitioner is kept out of the mischief's range. If the petitioner is exonerated, he would be entitled to all his benefits from the date of the order of the suspension, whether the petitioner should or should not continue in his office, on the post of Executive Engineer, during the period of inquiry is a matter to be assessed by the respondent-Corporation and ordinarily, this Court should not interfere with the order of suspension unless it is passed mala fide and without there being even prima facie evidence on record connecting the petitioner with the misconduct alleged against him. On the record the material

> produced by the petitioner and the respondent-Corporation and on perusal of the same it can be said that there is sufficient material on the record to connect the petitioner with the misconduct alleged against him. So far as the mala fide is concerned the petitioner has not pleaded any mala fide against Managing Director, who made the order of the suspension. The petitioner has come up with the case that the order of his suspension has been passed at the behest of the concerned Minister. The allegations against the Minister are too vague, indefinite and hardly sufficient to draw an inference that the Minister was in any manner instrumental in passing of the order of the suspension of the petitioner. In the absence of clear allegation against the Minister and in the absence of impleading him leo nomine so as to enable him to answer the charge against him, the charge of mala fide cannot be sustained.
>
> ... ..."

However, in my view, in the instant case, looking to the facts, it cannot be said that the petitioner is subjected to charge of grave misconduct of a serious nature. It cannot even be said that making demonstration in a lawful and peaceful manner can be said to be a misconduct. The said decision, therefore, could not come to the aid of the respondent-Institution.

Reference is also made by Mr.Kerial to the judgment of this Court in R.S. Sharma v. State of Gujarat & Ors., 1999 (2) GCD 1108. This Court has held that sufficiency of satisfaction is not within the domain of the Court. Senior Officer of the same department after enquiry found the case prima facie established and therafter recommended the suspension. However, it is required to be noted that, in the instant case, it cannot be said that the petitioner has committed any act of misconduct at all by resorting to demonstration near the gate. Not only that, even though considerable time has passed, the Department has not thought it fit to issue the charge-sheet.

Mr.Kerial has also relied upon the decision in the case of P.K. Bansal, Commissioner of Police v. R.G. Jadeja, 1993(2) GLR 983. It has been observed by this Court as under :-

" ... ...

While examining an order of suspension, the Courts are not concerned with the sufficiency of satisfaction. These matters are left to the subjective satisfaction of the authority. Such matters are not automatically and as a matter of course justiciable. Sufficiency of grounds cannot be enquired into; but as to whether opinion was formed at all can be examined. This Court cannot substitute its own satisfaction. There could be interference, if extraneous or irrelevant materials are taken note of; or there has been a total non-application of mind, or the action is patently perverse, unfair and unjust or is tainted with mala fides. This Court is not supposed to examine the formation of the subjective opinion as if an appellate Court. This Court is not concerned with the sufficiency of the satisfaction. We are not prima facie satisfied that at this juncture we could straightway characterize the impugned orders of suspension as suffering from any patent infirmity which should oblige this Court to stay them. We are obliged to make all the above say only for the purpose of finding out as to whether the learned single Judge was in order in staying the impugned orders of suspension. Certainly, what all we have said shall not weigh at the time when the Special Civil Applications get disposed of and that shall be on merits. We are convinced that at the interim stage, there is no justification for staying the impugned orders of suspension. Accordingly, we allow these Letters Patent Appeals, set aside the common order of the learned single Judge, subject matter of these Letters Patent Appeal and the interim reliefs asked for by the respondents pending the Special Civil Applications preferred by them, shall stand negatived.

... ..."

However, it is required to be noted that the aforesaid case is in connection with the Police Department and it was found by the Court that the authority was satisfied from the material on record that it was a case for suspension. However, it is required to be noted that there has to be some material for coming to the conclusion that it is a case for suspension. In the instant case, as stated earlier, the two incidents mentioned in the suspension order, prima facie, do not constitute any misconduct because what the petitioner did was to ask his right in a democratic manner and nobody can be restrained from sitting at the front entrance on a holiday or even to make lawful demonstration. He cannot be prevented from lawfully asserting his right by holding peaceful demonstration.

Mr.Kerial has relied upon the judgment in U.P. Rajya Krishi Utpadan Mandi Parishad & Ors. v. Sanjiv Rajan, 1993(4) SLR 543. It has been observed in paragraph 10 in the said judgment as under :-

> " ... ...
>
> We find from the charge-sheet that the allegations against the 1st respondent are grave inasmuch as they indicate that the amounts mentioned therein are not deposited in the bank and forged entries have been made in the pass book of the relevant accounts and the amounts are shown as having been deposited. In the circumstances, the High Court should not have interfered with the order of suspension passed by the authorities. The Division Bench has given no reason for upholding the learned single Judge's order revoking the suspension order. In matters of this kind, it is advisable that the concerned employees are kept out of the mischief's range. If they are exonerated, they would be entitled to all their benefits from the date of the order of suspension. Whether the employees should or should not continue in their office during the period of inquiry is matter to be assessed by the concerned authority and ordinarily, the Court should not interfere with the orders of suspension unless they are passed mala fide and without there

being even a prima facie evidence on record connecting the employees with the misconduct in question. In the present case, before the preliminary report was received, the Director was impressed by the 1st respondent-employee's representation. However, after the report, it was noticed that the employee could not be innocent. Since this is the conclusion arrived at by the management on the basis of the material in their possession, no conclusion to the contrary could be drawn by the Court at the interlocutory stage and without going through the entire evidence on record. In the circumstances, there was no justification for the High Court to revoke the order of suspension.

... ..."

It is required to be noted that considering the grave nature of the misconduct, the Honourable Supreme Court found that even second suspension order was justified and that it was not required to be revoked or set aside by the High Court.

So far as the Director General's presence in the Appellate Committee is concerned, Mr.Kerial has argued that by way of doctrine of necessity, he was required to remain present at the time of hearing of the appeal in order to complete the quorum. He submitted that he had not taken part in the appellate proceedings and he merely communicated the order of the appellate authority. He has also relied upon the decision of the Apex Court in AIR 1996 SC 1810 (supra). Reference is required to be made to paragraphs 14, 15 and 16 of the judgment which are as under :-

" ... ...

14. The next question then is if the Chief Election Commissioner, for reason of possible bias, is disqualified from expressing an opinion, how should the Election Commission conduct itself? As pointed out earlier Shri Sanghi, the learned counsel for the appellant, has very frankly and with his usual fairness stated that the Chief Election Commissioner preferred this appeal only because he

genuinely believed that the scheme of Article 324 did not conceive of a decision by majority, but if the Court comes to the conclusion that a decision can be reached without the Chief Election Commissioner participating in decision-making in the special circumstances of the case, the latter is not at all keen or anxious to hear and adjudicate upon the matter at issue before the Election Commission. We are quite conscious of the high office the Chief Election Commissioner occupies. Ordinarily we would be loath to uphold the submission of bias but having regard to the wide ramification the opinion of the Election Commissioner would have on the future of Ms.J. Jayalalitha, we think that the opinion, whatever it be, should not be vulnerable. The participation of the Chief Election Commissioner in the backdrop of the findings recorded by the learned single Judge as well as the Division Bench of the High Court would certainly permit an argument of prejudice, should the opinion be adverse to Ms.J. Jayalalitha. Therefore, apart from the legal aspect, even prudence demands that the Chief Election Commissioner should recuse himself from expressing any opinion in the matter. However, the situation is not so simple, it is indeed complex, in that, what would happen if the two Election Commissioners do not agree and there is a conflict of opinion between them? That would lead to a stalemate situation and the Governor would find it difficult to take a decision based on any such opinion. In such a situation, can the doctrine of necessity be invoked in favour of the Chief Election Commissioner?

15. We must have a clear conception of the doctrine. It is well settled that the law permits certain things to be done as a matter of necessity which it would otherwise not countenance on the touchstone of judicial propriety. Stated differently, the doctrine of necessity makes it imperative for the authority to decide and considerations of judicial propriety must yield. It is often invoked in cases of bias where there is no other authority or

Judge to decide the issue. If the doctrine of necessity is not allowed full play in certain unavoidable situations, it would impede the course of justice itself and the defaulting party would benefit therefrom. Take the case of a certain taxing statute which taxes certain perquisites allowed to Judges. If the validity of such a provision is challenged who but the members of the judiciary must decide it. If all the Judges are disqualified on the plea that striking down of such a legislation would benefit them, a stalemate situation may develop. In such cases the doctrine of necessity comes into play. If the choice is between allowing a biased person to act or to stifle the action altogether, the choice must fall in favour of the former as it is the only way to promote decision-making. In the present case also if the two Election Commissioners are able to reach a unanimous decision, there is no need for the Chief Election Commissioner to participate, if not the doctrine of necessity may have to be invoked.

16. We think that is the only alternative in such a situation. We are, therefore, of the opinion that the proper course to follow is that the Chief Election Commissioner should call a meeting of the Election Commission to adjudicate on the issue of disqualification of Ms. J. Jayalalitha on the grounds alleged by Dr.Swamy. After calling the meeting he should act as the Chairman but then he may recuse himself by announcing that he would not participate in the formation of opinion. If the two Election Commissioners reach a unanimous opinion, the Chief Election Commissioner will have the opinion communicated to the Governor. If the two Election Commissioners do not reach a unanimous decision in the matter of expressing their opinion on the issue referred to the Election Commission, it would be necessary for the Chief Election Commissioner to express his opinion on the doctrine of necessity. We think that in the special circumstances of this case this course of action would be the most

> appropriate one to follow because if the two Election Commissioners do not agree, we have no doubt that the doctrine of necessity would compel the Chief Election Commissioner to express his views so that the majority opinion could be communicated to the Governor to enable him to take a decision in accordance therewith as required by Article 192(1) of the Constitution.
>
> ... ..."

15. Mr.Kerial has, therefore, argued that, in view of the doctrine of necessity, in order to complete the quorum and in order to see that the hearing of the appeal is not adjourned further, the Director General remained present without taking part in the proceedings. Under the Rules, the appeal is required to be heard by the Executive Council and the Director General of the Institution is the Secretary of the Executive Council. Mr.Kerial has argued that, in view of the doctrine of necessity, being the Secretary of the Executive Council, he was required to remain present and he had not participated in the proceedings and, ultimately, he only communicated the decision of the Appellate Committee. It is, no doubt, true that, though, on a particular day, only in order to complete the quorum the Director General might have remained present, but, in any case, he being the author of the original order, it would have been in order if the hearing was postponed to some other day because his presence itself might create doubt in the mind of the petitioner that, ultimately, he might have discussed the issue with the other members, or that, in any case, he, being a Member of the Executive Council, might have influenced the decision. In the facts of the case, it would have been better if the hearing of the appeal was postponed to some other date so that the matter could have proceeded as and when proper quorum was available.

16. So touchy is the issue of bias that if a disqualified person remains present at a hearing or sits with the appellate authority, the proceeding may be set aside irrespective of the fact that he did not influence the decision or that he did not take any active part in the decision. It goes without saying that a cloud of suspicion is created in view of the presence of the Director General when the appeal of the petitioner was being heard. In Cooper v. Wilson, a Police Sergeant was dismissed by the Chief Constable of Liverpool and his

appeal against dismissal was rejected by the Watch Committee. The Chief Constable was present with the Watch Committee when they decided the appeal. In the aforesaid facts, the court granted a declaration that the presence of the Chief Constable, who was, in effect, respondent to the appeal, was fatal to the validity of the Watch Committee's decision. The Court, in deciding the case, observed that the risk that the respondent may influence the Court is so abhorrent to the notions of justice that the possibility of it or even the appearance of such possibility is sufficient to deprive the decision of all judicial force and to render it a nullity. The fact that suspicion of bias is directed to only one person out of a large decision-making body will not save the decision.

If the Director General did not remain present when the appeal of the petitioner was being heard, the legal maxim that "Justice should not only be done, but should manifestly and undoubtedly be seen to be done", would have been given full justice.

In any case, since in the facts of the case, I am of the opinion that there was absolutely no justification in passing the suspension order against the petitioner, it is not necessary to examine this question any further.

17. Mr.Kerial, however, also argued that two incidents mentioned in the suspension order are merely of illustrative nature and that there are some other cases of misconduct against the petitioner also, which can be considered at the time of enquiry or at the time when he is issued the charge-sheet. However, at the cost of repetition, it can be said that no departmental enquiry has been initiated against the petitioner till today. Not only that, even in the affidavit-in-reply, the justification for passing the suspension order has mainly been the incidents which are mentioned in the suspension order. The aforesaid grounds mentioned in the suspension order, therefore, prima facie cannot establish any misconduct on the part of the petitioner.

It is, no doubt, true that the suspension cannot be said to be a punishment at all, but that does not mean that the respondent No.1 can suspend its employee in a routine and casual manner even where there is no foundation or justification for the same. The facts of the case make it clear that simply because on 2nd October, 2000, the petitioner sat on fast at the front entrance by way of peaceful demonstration, when some dignitaries were to visit the Institution, he was

suspended from duty. It is not expected from such an Institution to resort to suspension in a routine manner. If it was really a case of some grave and serious misconduct or by the act of the petitioner if there is any damage to the property of the Institution, then the case may stand on a different footing. But, simply because the petitioner was sitting at the front entrance, without doing anything further, it cannot be said that the aforesaid action on his part was such that it would bring disrepute to the image of the Institution in the eye of the general public.

So far as the second incident about Log Book is concerned, the petitioner has relied upon the Circular dated 24.11.1998, of which reference is made hereinabove. However, whether the assertion on the part of the employee for demand of Log Book was justifiable or not may be a different question, but it cannot be said that without any basis and only in order to avoid discharging his duty as a Driver the said demand was made by the aforesaid employee. In any case, at the most, it can be said that his demand may not be justifiable and in view of the fact that subsequently, he has also tendered apology and Mr.Yagnik also assured that, in future, no cause for complaint will be given by the petitioner and he will never refuse to drive the vehicle, the Institution should have reconsidered the decision.

Even otherwise, as aforesaid, when the petitioner has already tendered his apology even to the Director General and has already submitted his apology in the form of affidavit, which is submitted before this Court and which is extracted in this judgment, it was expected from the Institution, like the Mahatma Gandhi Labour Institute, to show some magnanimity and the petitioner could have been given some chance to find out whether he has really improved or not. This Court had suggested to reconsider the aforesaid case in view of the apology given by the petitioner. However, unfortunately, the Institute was not interested in reconsidering the aforesaid case and, ultimately, this matter was required to be decided by this Court on its own merits. It would have been better if the respondent No.1 had shown some magnanimity by reconsidering the case on their own in view of the apology tendered by the petitioner. Since it has not been done, ultimately, the matter has been decided on its own merits.

18. Mr.Yagnik has also further assured that the petitioner will not indulge even in writing unnecessary letters and the petitioner will not indulge in any writing which may hurt the feelings of any of the

Officers, including that of the Director General of the Institution. However, that does not mean that even if there is any legitimate grievance on the part of the petitioner, he should be restrained from airing his grievance in an appropriate way. Such right of the petitioner cannot be curtailed either by the employer or by any one. The freedom of speech guaranteed by the Constitution cannot be taken away by any one much less by respondent No.1, the eponymous Institution of Mahatma Gandhiji, the Father of the Nation.

It is required to be noted that the petitioner is, in any case, a Class III employee. His demand may or may not be justifiable, but simply because he was asserting his rights and simply because that was not allegedly agitated in a proper manner, it cannot be said that his continuing in active service is prejudicial to the interest of the Institution. Even if his demand is not justifiable and still, if he has made some demands, it cannot be construed as a misconduct on his part. In the facts of the case, it was expected from the Director General to be a little bit more considerate and reasonable and was required to show some magnanimity by giving an opportunity to the petitioner as the petitioner had also shown regret for whatever has happened in the past.

Mr.Yagnik has submitted that, in past, on assurance given to him, he went away from the front entrance calling off his peaceful demonstration. Still, he was subjected to the suspension order and when the appellate proceedings were going on, the petitioner was apprehensive that if he tenders apology, it may even be treated as admission of guilt on his part and, therefore, he refrained himself from tendering apology.

Considering the facts and circumstances, as indicated above, I do not think that there is any justification on the part of the respondent No.1 to continue the petitioner any further in suspension. It is required to be noted that for the last 10 months, the petitioner is already under suspension, and, therefore, he is undergoing the torture and agony of suspension since long and it is clear that the respondents have also not considered the aforesaid incident so seriously since they have not initiated enquiry till today and hence, it is a fitting case wherein the suspension order is required to be set aside. In my view, there is absolutely no justification on the part of the Department not even to commence the enquiry since long and the justification given by Mr.Kerial of lack of sufficient

number of staff is hardly convincing.

19. Under the aforesaid circumstances, the petition is required to be allowed. The order of suspension is set aside. The respondents are directed to reinstate the petitioner within a period of 2 weeks from the date of receipt of the writ of this Court. It is required to be noted that in spite of the apology tendered by the petitioner, the respondent No.1 has not thought it fit to reconsider the decision, and in my view, it is a fit case in which the petitioner is entitled to get costs of this litigation. In the facts and circumstances of the case, the respondent No.1 is directed to pay costs of Rs.5,000/- to the petitioner. The petition is accordingly allowed and the Rule is made absolute.

September 3, 2001 (P.B. Majmudar, J.)

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(apj)